(d) Be subject to a maximum lifetime benefit of $1 million.

(3) Except as provided in this section, a health insurance issuer may exclude any category of licensed health care practitioner and any benefit or coverage for health care services otherwise required by law or rule from an individual uniform health benefit plan delivered or issued for delivery in this state."

Section 2. Section 33-22-522, MCA, is amended to read:

"33-22-522. Uniform health benefit plan — group. (1) Each insurer or health service corporation delivering or issuing for delivery in this state a health benefit plan, as defined in 33-22243, to a group shall make available a uniform health benefit plan providing the benefits and services required in subsection (2).
(2) The uniform health benefit plan must:
(a) provide coverage for the services and articles required by 33-22-1521(2);
(b) pay 50% of the covered expenses in excess of an annual deductible that may not exceed $1,000 per person or $2,000 per family;
(c) include a limitation of $5,000 per person or $7,500 per family on the total annual out-of-pocket expenses for services covered; and
(d) be subject to a maximum lifetime benefit of $1 million.
(3) Except as provided in this section, a health insurance issuer may exclude any category of licensed health care practitioner and any benefit or coverage for health care services otherwise required by law or rule from a group uniform health benefit plan delivered or issued for delivery in this state."
Section 3. Effective date. [This act] is effective on passage and approval. Approved May 2, 1997
CHAPTER NO. 505
[SB 3901
AN ACT GENERALLY ESTABLISHING RESTRUCTURING REQUIREMENTS FOR MONTANA'S ELECTRIC UTILITY INDUSTRY; PROVIDING CUSTOMRR CHOICE; GENERALLY REVISING THE TERRITORIAL INTEGRITY LAWS; REMOVING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES FROM CLASS SEVEN PROPERTY; INCLUDING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES IN CLASS NINE PROPERTY; APPROPRIATING FUNDS FOR THE ACTIVITIES OF THE TRANSITION ADVISORY COMMITTEE ON ELECTRIC UTILITY INDUSTRY RESTRUCTURING; AMENDING SECTIONS 15-6-137, 15-6-141, 69-5-101, 69-5-102, 69-5-104, 69-5-105, 69-5-106, 69-5-107, 69-5-108, 69-5-109, 69-5-110, AND 69-5-111, MCA; REPEALING SECTION 69-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required because this bill provides the public service commission with rulemaking authority.

Be it enacted by the Legislature o fthe State of Montana:

Section 1. Short title. [Sections 1 through 311 maybe cited as the "Electric Utility Industry Restructuring and Customer Choice Act".

Section 2. Legislative findings and policy. The legislature finds and declares the following:

(1) The generation and sale of electricity is becoming a competitive industry.

(2) Montana customers should have the freedom to choose their supplier of electricity and related services in a competitive market as soon as administratively feasible. Affording this opportunity serves the public interest.

(3) The interests of Montana consumers should be protected and the financial integrity of electrical utilities should be fostered.

(4) The public interest requires the continued protection of consumers through:

(a) licensure of electricity suppliers;

(b) provision of information to consumers regarding electricity supply service;

(c) provision of a process for investigating and resolving complaints;

(d) continued funding for public purpose programs for:

(i) cost-effective local energy conservation;

(ii) low-income customer weatherization;

(iii) renewable resource projects and applications;

(iv) research and development programs related to energy conservation and renewables;

(v) market transformation; and

(vi) low-income energy assistance;

(e) assurance of service reliability and quality; and

(f) prevention of anticompetitive and abusive activities.

(5) A utility in the state of Montana may not be advantaged or disadvantaged in the competitive electricity supply market, including the consideration of the existence of universal system benefits programs and the comparable level of funding for those programs throughout the regions neighboring Montana.

Section 3. Definitions. As used in [sections 1 through 311, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers and purchases electric energy and takes title to electric energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electric energy but that does not take title to electric energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of [the effective date of this act].

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(8) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of electricity to the public.

(9) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(10) "Financing order" means an order of the commission adopted in accordance with [section 31] that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

(11) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution; (ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of

recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

(12) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

(13) "Local governing body" means a local board of trustees of a rural electric cooperative.

(14) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

(15) "Nonbypassable rates or charges" means rates or charges approved by the commission imposed on a customer to pay the customer's share of transition costs or universal system benefits program costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

(16) "Pilot program" means a program using a representative sample of residential and small commercial customers to assist in developing and offering customer choice of electric supply for all residential and commercial customers.

(17) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on [the effective date of this act], including the public utility's successors or assignees.

(18) "Transition bondholder" means a holder of transition bonds including trustees, collateral agents, and other entities acting for the benefit of that holder.

(19) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

(20) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

(21) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

(22) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply
costs, including costs of capital, that become unrecoverable as a result of the

implementation of [sections 1 through 31] or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before [the effective date of this act] and costs arising from these investments and commitments;

(iv)the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifyingfacijjtie5 and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(23) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002, unless otherwise extended pursuant to [sections 1 through 311, during which utilities may phase in customer choice of electricity supplier.

(24) "Transition property" means the property right created by a financing order including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under [sections 1 through 3 11 or assignable pursuant to a financing order is only a contract right.

(25) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

(26) "Transmission services provider" means a person controlling or operating transmission facilities.

(27) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits program costs.

(28) "Universal system benefits programs" means public purpose programs

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) renewable resource projects and applications, including those that capture unique social and energy system benefits or provide transmission and distribution system benefits;

(d) research and development programs related to energy conservation and renewables;

(e) market transformation designed to encourage competitive markets for public purpose programs; and

(I) low-income energy assistance.

(29) "Utility" means any public utility or cooperative utility.

Section 4. Pilot programs. (1) Except as provided in [sections 5(4) and 201, beginning July 1, 1998, utilities shall conduct pilot programs using a representative sample of their residential and small commercial customers. A report describing and analyzing the results of the pilot programs must be submitted to the commission and the transition advisory committee established in [section 29] on or before July 1, 2000.

(2) Utilities shall use pilot programs to gather necessary information to determine the most effective and timely options for providing customer choice. Necessary information includes but is not limited to:

(a) the level of demand for electricity supply choice and the availability of market prices for smaller customers;

(b) the best means to encourage and support the development of sufficient markets and bargaining power for the benefit of smaller customers;

(c) the electricity suppliers' interest in serving smaller customers and the opportunities in providing service to smaller customers; and

(d) experience in the broad range of technical and administrative support matters involved in designing and delivering unbundled retail services to smaller customers.

Section 5. Public utility — transition to customer choice — *waiver.* (1)A public utility shall, except as provided in this section, adhere to the following deadlines:

(a) On or before July 1, 1998, all customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.

(b) Subject to subsection (2), and as soon as is administratively feasible but before July 1, 2002, all other public utility customers must have the opportunity to choose an electricity supplier.

(2) (a)Except as provided for in subsection (3), the Commission may determine that additional time is necessary for customers identified in subsection (1)(b); however, the implementation of full customer choice may not be delayed beyond July 1, 2004.

(b) A determination by the commission that additional time is necessary for subsection (1)(b) customers must be made at least 60 days in advance of the scheduled date and must be based on one or more of the following considerations:

(i) implementation would not be administratively feasible;

(ii) implementation would materially affect the reliability of the electric system; or

(iii) Montana customers or electricity suppliers would be disadvantaged due to lack ofa competitive electricity supply market.

(3) Except as provided in [sections 22 and 34 through 44], a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, may:

(a) defer compliance with [sections 1 through 31) until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory, except that the public utility shall file a transition plan pursuant to [section 6) to provide transition to customer choice on or before July 1, 2002, and must have completed the transition period to customer choice by July 1, 2006; and

(b) petition the commission to delay the public utility's transition plan filing until July 1, 2004.

(4) Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of [sections 4, 6 through 12, 22, and this section].

Section 6 . Public **utility — transition plans.** (1) All public utilities, pursuant to [sections 1 through 31], shall submit a transition plan to the commission Plans must be filed with the commission not later than 1 year before the date by which any customers of the public utility are entitled to choice of electricity supplier pursuant to [section 5]. The commission may develop a schedule for public utilities that are required to file plans. The transition plan must demonstrate that the public utility meets all the requirement5 of [sections 1 through 31].

(2) The commission shall develop a procedure schedule that includes:

(a) a preliminary transition plan determination including the commission's findings on whether the plan is complete and adequate subject to the requirements of [sections 1 through 31]; and

(b) an opportunity for a public utility to file a revised plan based on the preliminary determination.

(3) Unless waived by the public utility, the commission shall issue a final order approving, modifying, or denying the transition plan before 9 months after the

date a public utility files a plan. All parties are afforded an opportunity for hearing before issuance of the final order.

(4) The commission shall process a request for approval of a transition plan pursuant to the contested case procedures of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

(5) On approval of the plan, the commission shall enforce the public utility obligations as incorporated in the plan and in the commission's final order.

Section 7. **Public utility — customer choice** — continued service — **education of customers. (1) A** customer is permitted to choose an electricity supplier pursuant to the deadlines established in [section 5]. Public utilities shall propose a method for customers to choose an electricity supplier.

(2) If a customer has not chosen an electricity supplier by the end of the transition period, a public utility shall propose a method in the public utility's transition plans for assigning that customer to an electricity supplier.

(3) A public utility may phase in customer choice to promote the orderly transition to a competitive market environment pursuant to the deadlines in [section 5].

(4) Public utilities shall educate their customers about customer choice so that customers may make an informed choice of an electricity supplier. This education process must give special emphasis to education efforts during the transition period.

Section 8. Public utility — functional **separation, divestiture, and nondiscrimination. (1) To the extent** that a public utility is vertically integrated, a public utility shall functionally separate the public utility's electricity supply, retail transmission and distribution, and regulated and unregulated retail energy services operations in the state of Montana, upon application to and approval from the commission.

(2) The commission may not order a public utility to divest itself of any generation assets or prohibit a public utility from divesting itself voluntarily of any generation assets.

(3) Public utilities shall:

(a) prevent undue discrimination in favor of their own power supply, other services, divisions, or affiliates, if any;

(b) prevent any other forms of self-dealing that could result in noncompetitive electricity prices to customers; and

(c) grant customers and their electricity suppliers access to the public utility's retail transmission and distribution system on a nondiscriminatory basis at rates, terms, and conditions of service comparable to the use of the retail transmission and distribution system by the public utility and the public utility's affiliates.

(4) The provisions of this section are satisfied if the public utility adopts and complies with a code of conduct consistent with federal energy regulatory commission approved code of conduct pursuant to 18 CFR, part 37. The commission shall promulgate rules relating to the codes of conduct.

Section 9. Public utility — distribution services. (1) A public utility's distribution services provider shall:

(a) file tariffs that make distribution facilities available to all electricity suppliers, transmission services providers, and customers on a nondiscriminatory and comparable basis;

(b) build and maintain distribution facilities; and

(c) be an emergency supplier of electricity and related services.

(2) When a distribution services provider acts as an emergency supplier of electricity and related services to customers, the electricity supplier that should have provided the electricity shall reimburse the distribution services provider at the higher of a multiple of the cost or a multiple of the then-existing market rate for that electricity. The commission shall determine and authorize the multiple used. The market rate is the highest published rate for electricity purchased within the local load control area at the time that the distribution services provider provided the emergency supply. A distribution services provider is not required to purchase any reserve supply of electricity to fulfill this obligation.

Section 10. Public utilities — transmission services. For transmission services regulated by the commission, public utilities, through filed tariffs, shall make transmission services available for nondiscriminatoy and comparable use by all electricity suppliers, by distribution services providers, and by customers.

Section 11. Public utilities — electricity supply. (1) On the effective date of a commission order implementing a public utility's transition plan pursuant to [section 6), the public utility shall remove its generation assets from the rate base.

(2) During the transition period, the commission may establish cost-based prices for electricity supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier.

(3) If the transition period is extended, then the customers' distribution services provider shall:

(a) extend any cost-based contract with the distribution services provider's affiliate supplier for a term not more than 3 years; or

(b) purchase electricity from the market; and

(c) use a mechanism that recovers electricity supply costs in rates to ensure that those costs are fully recovered.

(5) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to [section 24).

Section 12. Public utilities transition costs and charges — rate moratorium. (1) Subject to the provisions of this section, the commission shall allow recovery of the following categories of transition costs:

(a) the unmitigable costs of qualifying facility contracts, including reasonable buyout or buy down costs, for which the contract price of generation is above the market price for generation;

(b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist because of current regulatory practices and that can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan, including costs, expenses, and reasonable fees related to issuing of transition bonds;

(c) the unmitigable transition costs related to public utility-owned generation and other power purchase contracts, except that recovery of those costs is limited to the amount accruing during the first 4 years after the commission enters an order pursuant to [section 6(3)); and

(d) other transition costs as may qualify for recovery under this section.

(2) Transition costs as determined by the commission upon an affirmative showing by a public utility must meet the following requirements:

(a) Transition costs must reflect all reasonable mitigation by the public utility, including but not limited to good faith efforts to renegotiate contracts, buying out or buying down contracts, and refinancing through transition bonds.

(b) The value of all generation-related assets and liabilities and electricity supply costs must be reasonably demonstrable and must be considered on a net basis, and methods for determining value must include but are not limited to:

(i) estimating future market values of electricity and ancillary services provided by the assets;

(ii) appraisal by independent third-party professionals; or

(iii) a competitive bid sale.

(c) Investments and power purchase contracts must have been previously allowed in rates or, if not previously in rates, must be determined to be used and useful to ratepayers in connection with the commission's approval of the utility's transition plan.

(d) Unless otherwise provided for in [sections 1 through 311, only costs related to existing investments and power purchase contracts identified in subsection (2)(c) and costs arising from those investments and power purchase contracts may be included as transition costs.

(3) (a) On commission approval of the amount of a public utility's transition costs, those costs must be recovered through the imposition of a transition charge.

(b) A transition charge may not be collected from customers for:

(i) new or additional loads of 1,000 kilowatts or greater that were first served by the public utility after December 31, 1996; or

(ii) loads served by that customer's own generation.

(c) Subject to commission approval, a utility and a customer may agree to alter the customer's transition charge payment schedule. Public utilities may file with

the commission tariffs for electric service rates that foster economic development or retention of existing customers within the state, including generally available rate schedules. Transition charges are the only charges that maybe imposed upon a customer class to recover transition costs under this section. A separate exit fee may not be charged.
(4) Transition charges must be imposed within a transition cost recovery period approved by the commission on a case-by-case basis. Except for transition costs recovered under subsection (1)(c), categories of transition costs may have varying transition cost recovery periods.
(5) Approval of transition costs and collection of those transition costs through transition charges is a settlement ofall transition costs claims by a public utility. A public utility seeking to recover transition costs through any means not authorized by [sections 1 through 311 may not collect transition charges with respect to these transition costs.
(6) Except as provided in subsection (7), public utilities shall implement a rate moratorium during the transition period as follows:
(a) From July 1, 1998, through June 30, 2000, public utilities may not charge rates higher than those rates in effect on July 1, 1998.
(b) From July 1, 2000, through June 30, 2002, and only for those customers subject to the provisions of[section 5(1)(b)], public utilities may not increase that increment of rates normally allocated to electric supply-related costs above the increment associated with electric supply-related costs reflected in rates in effect on July 1, 1998. Beginning on July 1, 2000, public utilities may propose increases to those increments of rates normally allocated to transmission and distribution costs.
(7) Excepted from the provisions of subsection (6) are:
(a) increased costs related to universal system benefits programs greater than those currently in rates, including the treatment of universal system benefits program costs as an expense;
(b) increased costs necessary to implement full customer choice, including but not limited to metering, billing, and technology. Those costs must be recovered from the customers on whose behalf the increased costs are incurred.
(c) subject to commission approval, an extraordinary event resulting in either:
(i) a 4% annual revenue requirement increase from July 1, 1998, through June 30, 2000; or
(ii) an 8% power supply-related annual revenue requirement increase from July 1, 2000, through June 30, 2002;
(d) portions of the increase or decrease in the annual state and local property tax expense that are greater than the payment or adjustment that results from applying the industry-recognized rates of inflation to the increase or decrease in the state and local property tax expense reflected in rates as of [the effective date of this act].

(8) Notwithstanding subsections (6) and (7), during the transition period, public utilities may not charge rates or collect costs that include costs reallocated to transition Costs at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact.

(9) Public utilities shall apply savings resulting under section 31] toward the rate moratorium pursuant to subsection (6).

(10) During the 4-year transition period, public utilities may accelerate the amortization of accumulated deferred investment tax credits associated with transmission, distribution, and the general plant as an adjustment to earnings if electric earnings fail below 9.5% earned return on average equity. The public utility may include the flow through of investment tax credits so that the public utility's earned return on equity is maintained at 9.5%. Accumulated deferred investment tax credits amortized under this subsection may not be reflected in operating income for ratemaking purposes.

(11) The commission shall issue the accounting orders necessary to align rate moratorium timing and requirements to actual transition bonds savings.

Section 13. Cooperative utility — transition plan for customer choice. (1) Except as provided in [section 20], on or before July 1, 2001, the local governing body of a cooperative utility shall adopt a transition plan.

(2) (a) Except as provided in subsection (2)(b), transition plans must contain a transition period that may not end later than July 1, 2002. At the conclusion of the transition period, all customers must have the opportunity to choose an electricity supplier.

(b) If after a pilot program for customers of a cooperative utility with loads less than 1,000 kilowatts, a competitive market, technology, or other conditions precedent to full customer choice have not developed, then the transition plan may be altered by the cooperative utility's governing body for those customers.

(3) [Sections 1 through 31] do not require the cooperative utility to divest itself of any generation, transmission, or distribution assets or prohibit a cooperative utility from divesting itself voluntarily of those assets.

(4)A cooperative utility's local governing body shall certify to the commission that the local governing body has adopted a transition plan. In the cooperative utility's ertificationfihi11g, the cooperative utility shall provide to the commission documentation that the cooperative utility's transition plan is consistent with [sections 1 through 31].

Section 14. Cooperative utility — customer choice — education of customers — continued service. (1) Except as provided in [section 20], cooperative utilities shall propose a method for cooperative utility customers to choose an electricity supplier.

(2) Customer choice may be phased in to promote the orderly transition to a competitive market environment.

(3) Cooperative utilities shall educate their customers about customer choice so that customers may make an informed choice of an electricity supplier. This

education process must give special emphasis to education efforts during the transition period.

(4) If a cooperative utility customer has not chosen an electricity supplier by the end of the transition period, then the electricity supplier is the cooperative utility that filed the plan or an electricity supplier designated by the cooperative utility.

Section 15. Cooperative utility — functional **separation. (1) To the** extent that a cooperative utility is vertically integrated, the cooperative utility has the option to functionally separate the cooperative utility's electricity supply, transmission, distribution, and unregulated energy services assets and operations in the state of Montana. If the cooperative utility intends to exercise this option, the cooperative utility's transition plan must explain the cooperative utility's proposed separation process.

(2) A cooperative utility shall describe in the transition plan measures taken by the cooperative utility to prevent undue discrimination in favor of the cooperative utility's own electricity supply, if any, and in favor of the cooperative utility's affiliates, if any.

(3) Cooperative utilities may establish a code of conduct similar to the federal energy regulatory commission's code of conduct established in 18 CFR, part 37.

Section 16. Cooperative utility distribution services. (1) A

cooperative utility transition plan must include distribution facility tariffs that must be established by the cooperative utility's local governing body and must include the obligation for the cooperative utility to:

(a) make distribution services available to all electricity suppliers, transmission services providers, and customers on a nondiscriminatory and comparable basis;

(b) build and maintain distribution facilities; and

(c) be an emergency supplier of electricity and related services.

(2) If a distribution services provider acts as an emergency supplier of electricity and related services to a customer of an electricity supplier, then the electricity supplier failing to meet contractual obligations shall reimburse the distribution services provider at an amount to be set by the local governing body but may not exceed the higher of a multiple of the cost or a multiple of the then-existing market rate for that electricity. The market rate is the highest published rate for electricity purchased within the local load control area at the time that the distribution services provider provided the emergency supply. A distribution services provider is not required to purchase any reserve supply of electricity to fulfill this obligation.

(3) Recoverable costs for cooperative utilities must be based upon standard financial reporting statements and may reflect comparable rates of return of other utilities.

Section 17. Cooperative utility — transmission **services.** Transition plans must state whether the cooperative utility's transmission services, if any, are regulated by the federal energy regulatory commission. If those services are

not regulated by the federal energy regulatory commission, the plan must provide the basis for comparable and nondiscriminatory use by all electricity suppliers, distribution services providers, and customers. A cooperative utility's local governing body shall establish the cooperative utility's transmission tariffs.

Section 18. Cooperative utility — electricity supply. (1) A transition plan may provide for a cooperative utility to own electric generation assets and for a cooperative utility to offer electricity supply service. The local governing body shall establish the price for electricity supply service offered by a cooperative utility.

(2) Cooperative utilities intending to offer electricity supply service shall comply with the provisions of [section 24].

(3) If a cooperative utility offers electricity supply service competitively to customers using a public utility's distribution facilities, the cooperative utility shall create an affiliated for-profit entity or similar structure to serve those customers that allows the entity to be taxed at the same level as other for-profit electricity suppliers.

Section 19. Cooperative utility — transition costs and charges. (1) For the purposes of this section, "transition costs" means those costs, liabilities, and investments that cooperative utilities would reasonably expect to recover if fully bundled ratemaking conditions continued and that may not be recoverable as a result of the transition to a competitive market for electricity supply service.

(2) Transition costs eligible for treatment include but are not limited to:

(a) regulatory assets and deferred charges typically recoverable in rates;

(b) nonutility and utility power purchase contracts;

(c) existing commitments or obligations incurred before [the effective date of this act] and other cooperative utility investments rendered uneconomic as a result of the implementation of [sections 1 through 31] or the introduction of retail wheeling through federal legislation or regulation;

(d) costs associated with any renegotiation or buyout of the existing nonutiity and utility power purchase contracts;

(e) revenue that appears as a portion of a facility charge necessary to meet debt service requirements, including any coverage amounts required by any mortgage, indenture, or other financing document;

U) costs of refinancing and retiring debt of the cooperative utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers; and

(g) all costs, expenses, and reasonable fees related to transition bonds.

(3) For a cooperative utility's transition costs to be fully recoverable, the cooperative utility shall make reasonable efforts to mitigate those transition costs.

(4) Cooperative utilities may not collect any more costs, including costs reallocated to transition costs, at a level higher than would otherwise be

anticipated had the current regulatory system remained intact, with the exception of:

(a) increased costs related to universal system benefits charges; and

(b) increased costs of metering, billing, and technology necessary to facilitate full customer choice.

(5) Subject to the obligation to mitigate transition costs, a cooperative utility shall fully recover transition costs as approved by its local governing body. Unmitigable transition costs are nonbypassable and collected on a nondiscriminatory basis from consumers using the cooperative utility's distribution facilities in the receipt of electricity supply services.

(6) A cooperative utility may not collect transition costs from a customer for which the cooperative utility does not have and never has had an obligation to incur costs to provide electricity supply service unless the unmitigated transition costs were incurred solely on behalf of the customer.

(7) Approval of and collection of transition costs through a transition charge is a settlement of all transition claims by a cooperative utility. A cooperative utility seeking to recover transition costs through any other means may not collect transition charges.

Section 20. Cooperative utility — exemption. (1) Within 1 year after [the effective date of this act], a cooperative utility may file a notice with the commission that the cooperative utility does not intend to open the cooperative utility's distribution facilities to electricity suppliers and does not intend to adopt a transition plan. Except as otherwise provided in the universal system benefits program pursuant to [section 22), a cooperative utility filing notice under this section is exempt from the provisions and requirements of [sections 1 through 31].

(2) A cooperative utility filing a notice under this section:

(a) may elect later to adopt a transition plan in accordance with [sections 1 through 31]; and

(b) may not use a public utility's distribution facilities unless preexisting contracts exist.

Section 21. Maintaining safety and reliability. Utilities shall maintain standards of safety and reliability of the electric delivery system and existing customer service requirements.

Section 22. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance during the transition period and into the future.

(2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the annual funding level for universal system benefits programs. Unless modified as provided in subsection (7), this funding level remains in effect until July 1, 2003.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) Utilities must receive credit toward annual funding requirements for a utility's internal programs or activities that qualify as universal system benefits programs, including those portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for customers' programs or activities as provided in subsection (7).

(c) A utility at which the sale of power for final end-use occurs is the utility that receives credit for the universal system benefits program expenditure.

(d) For a utility to receive credit for low-income related expenditures, the activity must have taken place in Montana.

(e) If a utility's or a customer's credit for internal activities do not satisfy the annual funding provisions of subsection(2), then the utility shall make a payment to the universal system benefits fund for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

(4)A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the . overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal energy assistance fund.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) A customer with loads greater than 1,000 kilowatts shall:

(a) pay a universal system benefits program charge equal to the lesser of:

(i) $500,000 less the customer credits provided for in this subsection (7); or

(ii) the product of .9 mills per kilowatt hour multiplied by the customer's kilowatt hour purchases, less customer credits provided for in this subsection (7);

(b) receive credit toward that customer's annual universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits program expenditure and these internal expenditures must include but not be limited to:

(i) expenditures that result in a reduction in the consumption of electrical energy in the customer's facility; and

(ii) those portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities; and

(c) customers making these expenditures must receive a credit against the customer's annual universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that customer's universal system benefits charges.

(8) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission and the transition advisory committee provided for in [section 29]. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the transition advisory committee. The annual report must include but is not limited to:

(a) the types of internal utility and customer programs being used to satisfy the provisions of [sections 1 through 31j;

(b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

Section 23. Commission authority — rulemaking authority. (1) Beginning on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail transmission and distribution services within the state of Montana, as provided in [sections 1 through 31], and may not regulate the price of electricity supply except as electricity supply may be procured during the transition period by the distribution function of a public utility for those customers that have not chosen an electricity supplier or for those customers that have not yet been assigned an electricity supplier. During the transition period, those procurements may include a cost-based contract from a supply affiliate or an unregulated division.

(2) If the transition period is extended for certain customers because the commission finds that workable competition in the electricity supply market does not exist, then the commission shall continue to regulate the provision of electricity supply by distribution services providers in accordance with [section 11].

(3) The commission shall decide if there is workable competition in the electricity supply market by determining whether competition is sufficient to

inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates.

(4) The commission shall license electricity suppliers and enforce licensing provisions pursuant to [section 241.

(5) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

(6) The commission shall establish just and reasonable rates through established ratemaking principles for public utility distribution and transmission services and shall regulate these services. The commission may approve rates and charges for electricity distribution and transmission services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with [sections 1 through 311, and on the public utility's transition plan.

(7) The commission shall certify that a cooperative utility has adopted a transition plan that complies with [sections 1 through 311. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.

(8) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices. .

(9) In addition to promulgating rules expressly provided for in [sections 1 through 311, the commission may promulgate any other rules necessary to carry out the provision of [sections 1 through 311.

(10) [Sections 1 through 311 do not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with [sections 1 through 31]; or

(b) compel any change to a cooperative utility's certification filing made pursuant to [sections 1 through 31].

Section 24. Licensing. (1) Except as provided in [section 20], an electricity supplier shall file an application with and obtain a license from the commission before offering electricity for sale to retail customers in the state of Montana.

(2) As a condition of licensing, an electricity supplier shall identify and describe its activities and purposes and the purposes of each of the electricity supplier's affiliates, if any, including whether an affiliate that owns or operates distribution facilities offers customer choice through open, fair, and nondiscriminatory access to the electricity supplier's or the electricity supplier's affiliate's distribution facilities.

(3) The commission may require electricity suppliers that provide electricity supply service to small customers to make a standard service offer that ensures that those customers have access to affordable electricity.

(4) The commission may require:

(a) proof of financial integrity and a demonstration of adequate reserve margins or the ability to obtain those reserves; and

(b) a licensee to post a bond should an electricity supplier fail to supply electricity or lack financial integrity.

(5) An electricity supplier shall provide the commission and all distribution services providers with copies of all license applications pursuant to subsection (2). Licensees shall update information and file annual reports with the commission and all distribution services providers.

(6) License applications are effective 30 days after filing with the commission unless the commission rejects the application during that period. If the commission rejects a license application, the commission shall specify the reasons in writing and, if practical, identify alternative ways to overcome deficiencies.

(7) Notwithstanding [sections 1 through 31], a cooperative utility is not required to apply for a license from the commission to be an electricity supplier to customers served by that cooperative utility in its electric facilities service territory or to any customers served by another cooperative utility subject to the consent of the other cooperative utility's local governing body.

Section 25. Penalties — license **revocation.** (1) The commission may begin a proceeding to revoke or suspend a license of an electricity supplier, impose a penalty, or both, for just cause on the commission's own investigation or upon the complaint of an affected party if it is established that the electricity supplier:

(a) intentionally provided false information to the commission;

(b) switched, or caused to be switched, the electricity supply for a customer without first obtaining the customer's written permission;

(c) failed to provide a reasonably adequate supply of electricity for its customers in Montana; or

(d) committed fraud or engaged in deceptive practices.

(2) Any person selling or offering to sell electricity in this state in violation of [sections 24, 27,] and this section is subject to a fine of not less than $100 or more than $1,000 for the violation or a license revocation or suspension. Each day of each violation constitutes a separate violation.

(3) The fine must be recovered in a civil action upon the complaint by the commission in any court of competent jurisdiction.

(4) A license revocation proceeding under this section is a contested case proceeding pursuant to the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

Section 26. Bill information — customer nonpayment — commission rulemaking. (1) Electrical bills to consumers must disclose each component of the electrical bill in accordance with rules promulgated by the commission. Electrical bills must disclose but are not limited to the following:

(a) distribution and transmission charges;

(b) electricity supply charges;

(c) competitive transition charges; and

(d) universal system benefits charges.

(2) The commission shall promulgate rules establishing the procedures relating to how and when an electricity supplier may discontinue service to a customer because of the customer's nonpayment and the procedures relating to reconnection, except that those rules may not apply to electricity suppliers that are cooperative utilities.

(3) Local governing bodies of a cooperative utility shall retain authority for cooperative utilities regarding:

(a) customer nonpayment and reconnection; and

(b) information contained in electrical bills to consumers.

Section 27. Unauthorized switching — commission rulemaking. (1) **An electricity supplier or any** person, firm, corporation, or governmental entity may not make any change in the electricity supplier for a customer without first obtaining the customer's written permission.

(2) The commission shall promulgate rules establishing procedures to prevent unauthorized switching.

Section 28. Reciprocity. (1) Except as provided in [section 20), all electricity suppliers must be afforded open, fair, and nondiscriminatory access to customers and a comparable opportunity to compete.

(2) A distribution services provider or the distribution services provider's affiliates may not use another distribution services provider's facilities in the state of Montana to sell electricity to customers in the state of Montana unless the first distribution services provider or the distribution services provider's affiliates offer comparable and nondiscriminatory access to the distribution services provider's distribution facilities.

Section 29. Transition advisory committee. (1) A transition advisory committee on electric utility industry restructuring is created. The transition advisory committee is composed of eight voting members who are appointed as follows:

(a) The speaker of the house shall appoint four members from the house of representatives, not more than two of whom may be from one political party.

(b) The president of the senate shall appoint four members from the senate, not more than two of whom may be from one political party.

(2) The following entities shall appoint nonvoting advisory representatives to the transition advisory committee:

(a) The director of the department of environmental quality shall appoint one department representative.

(b) The legislative consumer committee shall appoint one representative.

(c) One representative of the cooperative utility industry is appointed as designated by the Montana electrical cooperative association.

(d) The public utilities in the state of Montana shall appoint one member.

(e) The commission shall appoint one member.

(f) The governor shall appoint the following nonvoting committee members:

(i) one representative from the industrial community with an interest in the restructuring of the electric utility industry;

(ii) one representative from the non industrial retail electric consumer sector;

(iii) one representative from organized labor;

(iv) one representative from the community comprising environment and conservation interests;

(v) one representative from a low-income program provider;

(vi) one representative of Montana's Indian tribes; and

(vii) one representative of the electric power market industry.

(3) In case of a vacancy, a replacement must be selected in the manner of the original appointment.

(4) Legislative members are entitled to salary and expenses as provided in section 5-2-302.

(5) The public service commission, legislative services division, and appropriate state agencies shall provide staff assistance as requested by the committee.

(6) Transition advisory committee members must be appointed within 60 days of[the effective date of this act] to an initial term expiring on December 31, 1999. Subsequent terms must be for up to 2 years expiring on January 1 of odd-numbered years.

(7) The voting members shall select a transition advisory committee presiding officer.

(8) The transition advisory committee on electric utility industry restructuring must dissolve on the earlier of either the date that full transition to retail competition is completed or December 31, 2004.

(9) The transition advisory committee shall provide an annual report on the status of electric utility restructuring on or before November 1 to the governor, the speaker of the house, the president of the senate, and the commission and shall provide quarterly interim summary reports to the members of the legislature through January 1, 1999.

(10) The transition advisory committee shall meet at least quarterly or as often as is necessary to conduct its business.

(11) The transition advisory committee shall analyze and report on the transition to effective competition in the competitive electricity supply market. The annual report made in the year 2000 must evaluate specifically the pilot programs for customers with loads under 1,000 kilowatts and must include legislative recommendations, if it appears appropriate, about the best means to further encourage the development of customer choice and meaningful market access for the benefit of smaller customers. The annual report for the year 2000 must also address the need, if any, for additional consumer protection including protection from abusive or anticompetitive practices.

(12) The criteria that the transition advisory committee must use to evaluate effective competition in the electricity supply market include but are not limited to the following:

(a) the level of demand for power supply choice and the availability of market prices for smaller customers;

(b) the existence of sufficient markets and bargaining power to the benefit of smaller customers and the best means to encourage and support the development of sufficient markets;

(c) the level of interest among electricity suppliers and the opportunity for electricity suppliers to serve smaller customers; and

(d) the existence of the requisite technical and administrative support that enables smaller customers to have choice of electricity supply.

(13) The transition advisory committee shall recommend legislation if necessary to promote electric utility restructuring and retail choice of electricity suppliers.

(14) The transition advisory committee shall make recommendations to the governor, regarding the implementation of statewide universal system benefits and universal energy assistance funds, in time to allow for those funds to be created on or before January 1, 1999. This may include recommendations regarding the assignment of an existing government agency or private, nonprofit entity as the fund administrator and administration guidelines for the funds, including the means by which funds may be made available for use.

(15) The transition advisory committee shall monitor and evaluate the universal system benefits programs and comparable levels of funding for the region and make recommendations to the 58th legislature to adjust the funding level provided for in [section 221 to coincide with the related activities of the region at that time.

(16) On or before July 1, 2002, the transition advisory committee, in coordination with the commission, shall conduct a reevaluation of the ongoing need for universal system benefits programs and annual funding requirements and shall make recommendations to the 58th legislature regarding the future need for those programs. The determination must focus specifically on the existence of markets to provide for any or all of the universal system benefits programs or whether other means for funding those programs have developed. These recommendations may also address how future reevaluations will be provided for, if necessary.

(17) On or before November 1, 2001, the transition advisory committee shall collect information to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers outside of the state of Montana comparable to the to [sections 1 through 31] to utilities or their affiliates located outside the state of Montana. That information must be included in the report to the 58th legislature.

(18) On or before November 1, 1998, the transition advisory committee shall make recommendations to the governor and the legislature regarding the provision of low-income energy assistance programs in Montana by all energy providers.

Section 30. Tax revenue analysis. (1) The revenue oversight committee, as provided for in 5-18-102, shall analyze the amount of state and local tax revenue derived from previously regulated electricity suppliers that will enter the competitive market and report to the legislature annually on how revenue to the state or local government is changed by restructuring and competition.

(2) On or before November 30, 1998, the revenue oversight committee shall recommend legislative changes, if any, to address the establishment of comparable state and local taxation burdens on all market participants in the supply of electricity. Any legislation recommended by the revenue oversight committee should place comparable state and local taxation burdens upon all market participants.

Section 31. Transition costs financing. (1) A utility may, after July 1, 1997, apply to the commission for a determination that certain transition costs may be recovered through the issuance of transition bonds. If transition bonds are issued, cost savings associated with and resulting from the bonds must benefit customers. After the issuance of a financing order, the utility retains sole discretion regarding whether to sell, assign, or otherwise transfer or pledge transition property or to cause the transition bonds to be issued, including the right to defer or postpone the sale, assignment, transfer, pledge, or issuance. If transition bonds are not issued within 4 years of the issuance of the financing order, the financing order must terminate. The utility may apply for an extension or renewal of a financing order.

(2) (a) The commission may issue financing orders in accordance with this section to facilitate the recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition property. A financing order may be adopted only upon the application of a utility and may only become effective in accordance with its terms after the utility files with the commission the utility's written consent to all terms and conditions of the financing order. A financing order may specify how amounts collected from a customer are allocated between fixed transition amounts and other charges.

(b) A financing order must include, without limitation, a procedure for the expeditious approval by the commission of periodic adjustments to nonbypassable rates and charges associated with fixed transition amounts included in the order to ensure recovery of all transition costs and the costs of capital associated with the proposed recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition property including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing order. The order must set forth the term over

which the transition bonds are to be paid, but those terms may not exceed 20 years. These adjustments may not impose fixed transition amounts upon customer classes that were not subject to the fixed transition amounts in the pertinent financing order.

(3) (a) Notwithstanding any other provision of law, and except as otherwise provided in this section with respect to transition property that has been made the basis for the issuance of transition bonds and upon the issuance of transition bonds, the financing orders and the fixed transition amounts must be irrevocable.

(b) If transition bonds have been issued, the commission may not by rescinding, altering, or amending the financing order or otherwise:

(i) revalue or revise for ratemaking purposes the transition costs or the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property;

(ii) determine that the fixed transition amounts or rates are unjust or unreasonable; or

(iii) in anyway reduce or impair the value of transition property either directly or indirectly by taking fixed transition amounts into account when setting other rates for the utility.

(c) The total amount of the transition property may not be subject to reduction, impairment, postponement, or termination.

(d) Except as otherwise provided in this section, the state pledges and agrees with the assignees and pledges of transition property and transition bondholders that the state may not limit or alter the fixed transition amounts, transition property, financing orders, or any right under the bonds until the bonds, together with the interest on the bonds, are fully met and discharged. The board, as agent for the state, is authorized to include this pledge and undertaking for the state in these bonds.

(e) Notwithstanding any other provision of this section, the commission shall approve those adjustments to the fixed transition amounts as may be necessary to ensure timely recovery of all transition costs that are the subject of the pertinent financing order and the costs of capital associated with the recovery, reimbursement, financing, or refinancing of transition costs and acquiring transition property including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing order. The adjustments may not impose fixed transition amounts upon customer classes that were not subject to the fixed transition amounts in the pertinent financing order.

(4) (a) Financing orders do not constitute a debt or liability of the state or of any political subdivision of the state if issued through the board and do not constitute a pledge of the full faith and credit of the state or any of the state's political subdivisions if issued through the board. The financing orders are payable solely from the funds provided under this section. The bonds and offering documents must contain on their face a statement to the following effect: This bond may not constitute an indebtedness or a loan of credit of the state of Montana or any political subdivision of the state of Montana within any constitutional or statutory provision. Neither the full faith and credit nor the

taxing power of the state of Montana is pledged to the payment of the principal or interest on this bond, and neither the state of Montana nor any political subdivision of the state of Montana is obligated, directly, indirectly, or contingently, to levy or to pledge any form of taxation or to make any appropriation for the payment of this bond. This bond is a limited obligation of the issuer, payable solely out of the transition property or the proceeds of that property specifically pledged for its payment and not otherwise.

(b) The issuance of bonds under this section may not directly, indirectly, or contingently obligate the state or any political subdivision of the state to levy or to pledge any form of taxation or to make any appropriation for bond payment.

(5) The commission shall establish procedures for the expeditious Processing of applications for financing orders, including the approval or disapproval of applications within 120 days after a utility submits a complete application. The commission shall provide in any financing order for a procedure for the expeditious approval by the commission of periodic adjustments to the fixed transition amounts that are the subject of the pertinent financing order pursuant to subsection (2). The commission shall determine on each anniversary of the issuance of the financing order and at additional intervals as may be provided for in the financing order whether the adjustments are required and shall provide for the adjustments, if required, to be approved within 60 days of each anniversary of the issuance of the financing order or of each additional interval provided for in the financing order.

(6) Fixed transition amounts become transition property when and to the extent that a financing order authorizing the fixed transition amounts has become effective in accordance with subsection (2), and the transition property must thereafter continuously exist as property for all purposes with all of the rights and privileges of [sections 1 through 311 for the period and to the extent provided in the financing order or until the transition bonds are paid in full including all principal, interest, premium, costs, and arrearages on the transition bonds.

(7) Transition bonds may be issued upon commission approval in the pertinent financing order. Transition bonds must specify that they do not provide recourse to the credit or any assets of the utility, other than the transition property as specified in the pertinent financing order.

(8) (a) A utility may sell, assign, or transfer all or portions of the utility's interest in transition property to an assignee. A utility or an assignee may further sell, assign, or transfer the utility's interest in that transition property to one or more assignees in connection with the issuance of transition bonds to the extent approved in the pertinent financing order.

(b) A utility or an assignee may pledge transition property as collateral for transition bonds to the extent approved in the pertinent financing order and may provide for a security interest in the transition property as provided in this section.

(c) Transition property may be sold, assigned, or transferred for the benefit of:

(i) transition bondholders in connection with the exercise of remedies upon a default; or

(ii) any person acquiring the transition property after a sale, assignment, or transfer pursuant to this section.

(9) (a) To the extent that any interest in transition property is sold, assigned, transferred, or pledged as collateral, the commission shall authorize the utility to contract with any assignee so that the utility will, subject to the utility's rights under subsection (18):

(1) continue to operate the utility's system and to provide service to the utility's customers;

(ii) collect amounts in respect of the fixed transition amounts for the benefit and account of the assignee; and

(iii) account for and remit these amounts to or for the account of the assignee.

(b) Contracting with the assignee in accordance with the commission's authorization may not impair or negate the characterization of the sale, assignment, transfer, or pledge as a true sale, an absolute assignment or transfer, or a grant of a security interest, as applicable.

(10) Notwithstanding any other provision of law, any provision under this section or under a financing order requiring that the commission take or refrain from taking action with respect to the subject matter of a financing order binds the commission and any successor commission or agency exercising functions similar to the commission, and the commission or any successor commission or agency may not rescind, alter, or amend that requirement in a financing order.

(11) A pledge or any other security interest in transition property is valid, is enforceable against the pledgor and third parties, including judgment lien creditors, subject only to the rights of any third parties holding security interests in the transition property perfected in the manner described in this section, and attaches only when all of the following have taken place:

(a) the commission has issued the financing order authorizing the fixed transition amounts included in the transition property;

(b) value has been given by the pledgees of the transition property; and

(c) the pledgor has signed a security agreement or other financing-related agreement covering the transition property.

(12) (a) A valid and enforceable security interest in transition property is perfected only when it has attached and when a financing statement has been filed with the secretary of state in accordance with procedures that the secretary of state may establish. The financing statement must name the pledgor of the transition property as debtor and identify the transition property.

b) Any description of the transition property is sufficient if the description refers to the financing order creating the transition property.

(c) The **Commission** may require other filings with respect to the security interest in accordance with procedures the commission may establish, except that these filings may not affect the perfection of the security interest.

(13) A perfected security interest in transition property is a continuously perfected security interest in all revenue and proceeds arising with respect to the transition property, whether or not the revenue or proceeds have accrued. Conflicting security interests must rank according to priority in time of perfection. Transition property constitutes property for all purposes, including for contracts securing transition bonds, whether or not the revenue and proceeds arising with respect to the transition property have accrued.

(14) (a) Subject to the terms of the security agreement covering the transition property and the rights of any third parties holding security interests in the transition property perfected in the manner described in this section, the validity and relative priority of a security interest created under this section is not defeated or adversely affected by:

(i) the commingling of revenue arising with respect to the transition property with other funds of the utility that is the pledgor or transferor of the transition property; or

(ii) any security interest of any third party in a deposit account of that utility perfected under Title 30, chapter 9, part 3, into which the revenue is deposited.

(b) Subject to the terms of the security agreement, upon compliance with the requirements of this section, a pledgee of the transition property has a perfected security interest in all cash and deposit accounts of the utility in which revenue arising with respect to the transition property has been commingled with other funds, but the perfected security interest must be limited to an amount no greater than the amount of the revenue with respect to the transition property received by the utility within 12 months before any default under the security agreement or the institution of insolvency proceedings by or against the utility, less payments from the revenue to the pledgees during that 12-month period.

(15) (a) If a default occurs under the security agreement covering the transition property, a pledgee of the transition property, subject to the terms of the security agreement, has all rights and remedies of a secured party upon default under Title 30, chapter 9, part 5, and is entitled to foreclose or otherwise enforce the pledgee's security interest in the transition property, subject to the rights of any third parties holding prior security interests in the transition property perfected in the manner provided in this section.

(b) The commission may require in the financing order creating the transition property that in the event of default by the utility in payment of revenue arising with respect to the transition property, the commission and any successor to the commission, upon the application by a pledgee or assignee of the transition property and without limiting any other remedies available to the pledgees or transferees by reason of the default shall order the sequestration and payment to the pledgee or assignee of the proceeds of the transition property. An order must remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the public utility or a debtor, pledgor, or transferor of the transition property.

(c) Any sum in excess of amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the transition bonds and other costs arising under the security agreement must be remitted to the debtor or to the pledgor as provided in the security agreement.

(16) (a) A transfer of transition property by a utility to an assignee or by the assignee to another assignee that the parties have in the governing documentation expressly stated to be a sale or other absolute transfer in a transaction approved or authorized in a financing order must be treated as an absolute transfer of all of the transferor's right, title, and interest, as in a true sale, and not as a pledge or other financing of the transition property, other than for federal and state income and franchise tax purposes.

(b) Granting to transition bondholders a preferred right to revenue of the utility or the provision by the utility or an assignee of other credit enhancement with respect to transition bonds may not impair or negate the characterization of any transfer as a true sale, other than for federal and state income and franchise tax purposes.

(c) Notwithstanding the provisions of this subsection (16), for state tax purposes, a transfer must be treated as a pledge or other financing unless the governing documentation of transfer specifically states that the transfer is intended to be treated otherwise. The characterization of the transfer as a true sale or other absolute transfer in the governing documentation of a transfer is not intended to prejudice the characterization of the transfer as a pledge or other financing for federal tax purposes.

(17) A sale, assignment, or other transfer of transition property may only be considered perfected as against any third person, including any judicial lien creditor, when both of the following have taken place:

(a) the financing order authorizing the fixed transition amounts included in the transition property has become effective in accordance with subsection (2);

(b) an assignment of the transition property, in writing, has been executed and delivered to the transferee.

(18) (a) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement with the secretary of state in accordance with procedures that the secretary of state may establish has priority. The financing statement must name the assignor of the transition property as debtor and must identify the transition property. Any description of the transition property is sufficient if the description refers to the financing order creating the transition property. The commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures that the commission may establish, but these filings may not affect the perfection of the transfer.

(b) Any successor to the utility, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding or pursuant to any merger, sale, or transfer, by operation of law or otherwise, shall perform and satisfy all obligations of the utility pursuant to this section in the same manner and to the same extent as the utility, including but not limited to collecting and paying to

the assignee or pledgee, as the case may be, revenue arising with respect to the transition property sold, assigned, transferred, or pledged to secure transition' bonds.

(19) Transition property or any right, title, or interest of a utility, assignee, or pledgee described in the definition of transition property, whether before or after the issuance of a financing order, does not constitute an account or general intangibles under 30-9-106. Any right, title, or interest pertaining to a financing order, including the interest pertaining to a financing order, along with the associated transition property and any revenue, collections, claims, payments, money, or proceeds of or arising from fixed transition amounts pursuant to the financing order, may not be considered proceeds of any right, title, or interest other than in the order and the transition property arising from the order.

(20) The lien under this section is enforceable against the pledgor and all third parties, including judicial lien creditors, subject only to the rights of any third- parties holding security interests in the transition property previously perfected. in the manner described in this section if value has been given by the purchasers' of transition bonds. A perfected lien in transition property is a continuously perfected security interest in all revenue and proceeds arising with respect to the associated transition property, whether or not revenue has been accrued. Transition property constitutes property for the purposes of contracts securing transition bonds, whether or not the related revenue has accrued. The lien created under this section is perfected and ranks before any lien, including any judicial lien, that subsequently attaches to the transition property, to the fixed transition costs, and to the financing order and any rights created by the order or any proceeds of the order. The relative priority of a lien created under this section is not defeated or adversely affected by changes to the financing order or to the fixed transition amounts payable by any customer.

(21) The commission shall establish and maintain a separate system of records to reflect the date and time of receipt of all filings made under this section and may provide that transfers of transition property to an assignee be filed in' accordance with the same system.

(22) Any sale, assignment, or other transfer of transition property or any pledge of transition property is exempt from any state or local sales, income, transfers, gains, receipts, or similar taxes.

(23) The transition bonds issued under [sections 1 through 311 are exempt from the provisions of Title 30, chapter 10, but copies of all prospectus and disclosure documents must 'be deposited for public inspection with the state securities commissioner.

(24) The granting, perfection, and priority of security interests with respect to transition property and the proceeds thereof are governed by this section rather than Title 30, chapter 9.

(25) Upon the payment in full of transition bond principal and interest, the utility shall discontinue charging and collecting the competitive transition charge associated with that portion of the utility's approved transition costs.

(26) The commission may, by order or rule and subject to terms and conditions that it may prescribe, exempt any security or class of securities for which an

application is required under this title or any public utility or class of public utility from the provisions of this title if it finds that the application of this title to the security, class of security, public utility, or class of public utility is not required by the public interest.

Section 32. Section 15-6-137, MCA, is amended to read:

"15-6-137. Class seven **property — description — taxable percentage. (1)** Class seven property includes:

(a) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas and cities and towns of 800 persons or less;

(b) all property owned by cooperative rural electrical and cooperative rural telephone associations that serve less than 95% of the electricity consumers or telephone users within the incorporated limits of a city or town, *except rural electric cooperative eproperties described in 15-6-141(1)(a);*

(c) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

(2) To qualify for this classification, the average circuit miles for each station on the telephone communication system described in subsection (1)(b) must be more than 1 mile.

' **(3)** Class seven property is taxed at 8% of its market value."

Section 33. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class nine property — description — taxable percentage.

(1) Class nine property includes:

(a) centrally assessed electric power companies' allocations, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities , not including rural electric cooperatives. *However, rural electric cooperatives' property used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3, 500 persons in which a centrally assessed electric power company also owns property is included. For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility.*

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electric power and natural gas companies' property;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five;

(iii) property owned by organizations providing telephone communications to rural areas and classified in class seven;

(iv) railroad transportation property included in class twelve; and

(v) airline transportation property included in class twelve.

(2) Class nine property is taxed at 12% of market value."

Section 34. Section 69-5-101, MCA, is amended to read:

"69-5-101. Short title. This part shall-be *is* known and may be cited as the "Territorial Integrity Act e439-74"."

Section 35. Section 69-5-102, MCA, is amended to read:

"69-5-102. Definitions. When used in this part, the following definitions apply:

(1) ~~"Commission premise" means the premises where the business of selling, warehousing, or distributing a commodity or other business activity is carried on or professional or other services are rendered.~~

"Agreement" means a written agreement between two or more electric facilities providers that identifies the geographical area to be served exclusively by each electric facilities provider that is a party to the agreement and any terms and conditions pertinent to the agreement.

(2) "Electric cooperative" means a rural electric cooperative organized under Title 35, chapter 18, or a foreign corporation admitted there under to do business in Montana.

(3) "Electric ~~*supplier*~~ *facilities provider"* means any ~~electrial~~ utility ~~and any electric cooperative~~ *that provides electric service facilities to the public.*

(4) *"Electric service facilities" means any distribution or transmission system or related facility necessary to provide electricity to the premises, including lines.*

~~*4*~~*(5)* "Electric utility" means a person, firm, or corporation other than an electric cooperative ~~which furnishes electrical~~ *that provides electric* service *facilities* to the public.

~~(5) "Industrial premises' means the premises where an industrial activity is carries on, including but not limited to the operation of factories, mills machine shops, mines, oil wells, refineries, pumping cleaning and dyeing works, creameries, canneries, stockyards, feedlots, military installations, or there extractive, fabricating or processing activities.~~

(6) "Line" means any electric *supply* conductor ~~operating at a nominal voltage level of 34,500 volts or less, measured phase to phase.~~

(7) "Premises" means a building, residence, structure, or facility to which ~~electricity **is being**~~ *electric service facilities are provided* or is *are* to be ~~furnished; provided, that~~ *installed; however,* two or more buildings, structures, or facilities which *that* are located on one tract or contiguous tracts of land and *that* are

~~utilized~~ *used* by one electric consumer for farming, business, commercial, industrial, institutional, governmental, or trailer court purposes ~~shall~~ *must* together constitute one premises, except that any such building, structure, or facility, other than a trailer court, *shall may* not, together with any other building, structure, or facility, constitute one premises if the electric service to it is separately metered and the charges for ~~such~~ *that* service are calculated independently of charges for service to any other building, structure, or facility.

(8) "Utility" means a public utility regulated by the commission pursuant to Title 69, chapter 3, or a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18."

Section 36. Section 69-5-104, MCA, is amended to read:

"69-5-104. **Continuation of ~~service~~ *electric service facilities* to existing consumers. ~~Every~~** *Each* electric ~~supplier~~ *service facilities provider* ~~*shall have*~~ *has* the right to ~~*serve*~~ *provide electric service facilities to* all premises being served by it or to which any of its facilities are attached on ~~February 1, 1971~~ *[the effective date of this act]."*

Section 37. Section 69-5-105, MCA, is amended to read:

"69-5-105. Service to new consumers. (1) Subject to 69-5-106 *this part,* the electric supplier *facilities provider* having a line nearest the premises, as measured in accordance with subsection (2), shall ~~serve~~ *provide electric service facilities to the* premises initially requiring service after Pebuary-4—h974 *[the effective date of this act], which creates a rebuttable presumption that the nearest line is the least-cost electric service facility to the new customer. However, a customer or another electric facilities provider may rebut the presumption, and another electric facilities provider may provide the electric service facilities if it can do so at less cost.*

(2) All measurements under this part shall *must* be made on the shortest straight line which *that* can be drawn from the conductor nearest the premises to the nearest permanent portion of the premises. ~~Construction power for premises to be constructed shall be supplied by the electric supplier having the right to serve the completed premises;~~

(3) If the electric *facilities providers are unable to reach agreement as to which electric facilities provider can provide electric service facilities at least cost, an independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric facilities provider can extend its lines to the consumer at the least cost. The cost of those engineering services must be paid equally by the electric facilities providers involved."*

Section 38. Section 69-5-106, MCA, is amended to read:

"69-5-106. ~~Service~~ *Electric service facilities* to ~~industrial or~~ commercial premises *large* ***customers.*** (1) An electric utility has the right to furnish electric service *facilities* to any ~~industrial or commercial~~ premises if the estimated connected load for ~~plant~~ operation at ~~such industrial or commercial~~ *the* premises will be 400 kilowatts or larger within 2 years from the date of initial

service ~~provided such~~ *and if the* electric utility can extend its ~~lines~~ *facilities* to ~~such industrial or commercial~~ *the* premises at less cost to the electric utility or ~~the industrial or commercial customer~~ than the electric cooperative cost. The estimated connected load shall *must* be determined from the plans and specifications prepared for construction of the premises or, if ~~such~~ *an* estimate is not available, shall *must* be determined by agreement of the electric ~~supplier~~ *facilities provider* and the customer. The fact that *the* actual connected load after *2* years from the date of initial service is less than 400 kilowatts does not affect the right of the electric ~~supplier~~ *facilities provider* initially providing *electric* service *facilities* to continue *to provide electric* service *facilities* to seek *the* premises.

(2) An independent consultant engineer agreeable to both electric ~~supplier~~ *facilities providers* or, in the event of failure of the electric ~~supplier~~ *facilities providers* to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric ~~supplier~~ *facilities provider* can extend its ~~lines to the consumer~~ *facilities* at the least cost *to the utility.* The cost of ~~such~~ *those* engineering services shall *must* be paid equally by the electric ~~supplier~~ *facilities providers* involved.

~~(3) No premises other than another such commercial or industrial premises shall be served from a line constructed under this section."~~

Section 39. Section 69-5-107, MCA, is amended to read:

"69-5-107. **~~Service to property owned by electric supplier~~** *Customer-owned facilities.* ~~*Nothing in 69-5-103 through 69-5-106 shall restrict the right to an electric supplier to furnish electric service to any property owned by the electric suppler.*~~ *This part may not limit a customer's right to construct, own, or operate electric service facilities for the customer's own use, and construction, ownership, or use may not cause the customer to be considered a utility. A customer may not duplicate existing electric service facilities."*

Section 40. Section 69-5-108, MCA, is amended to read:

"69-5-108. Agreements between electric suppliers as to service areas facilities providers. ~~Notwithstanding the provision of 65-5-103 through 69-5-109, an electric supplies may furnish electric service to any consumer at any premises being service by another electric supplier upon written agreement of the affected electric suppliers or at premises that another electric supplier has the right to service pursuant to this part, upon written agreement of the affected electric suppliers.~~ Utilities may enter into agreements that identify the geographical area to be exclusively served by each electric facilities provider that is party to the agreement, overriding the provisions of 69-5-105 and 69-5-107. If an agreement is approved by the commission pursuant to this part, the agreement is valid and binding on all electric facilities providers and all customers, except those provided for in 69-5-106.

Section 41. Section 69-5-109, MCA, is amended to read:

"69-5-109. ~~Special provision for annexed areas. With respect to service in areas which are annexed to incorporated municipalities having a population in excess of 3,500 persons, electric suppliers have rights and are subject to restrictions as follows:~~

~~(1) Every electric supplier has the right to serve all premises being served by it on the date of annexation~~

~~(2) An electric cooperative does not have the right to serve any premises initially requiring service on or after the date of annexation. The restriction stated in this subsection does not apply to incorporated municipalities in which 95% or more of the premises were served by an electric cooperative on February 1, 1971.~~ (1) Electric facilities providers providing electric service facilities in or near areas that are incorporated municipalities having a population in excess of 3,500 persons and having annexed areas since 1985 or having municipals planning zones on [the effective date of this act] shall enter into agreements dividing the annexed and planning zone areas into exclusive service territories and shall submit the agreements to the commission for approval, pursuant to this part

(2) The agreements do not apply to electric service facilities with loads of 400 kilowatts or greater. Agreements must be based on the location of facilities in place on [the effective date of this act].

(3) I/electric facilities providers have failed to negotiate agreements within 1 year from the [effective date of this act], the commission shall divide the annexed and planning zone areas into exclusive service territories, using the considerations pursuant to [section 44].

(4) Until agreements are final, electric service facilities to new customers will be provided pursuant to 69-5-105."

Section 42. Section 69-5-110, MCA, is amended to read:

"69-5-110. Jurisdiction of district courts over disputes. The district courts of the county or counties within which the premises or lines involved in any dispute are located ~~shall~~ have jurisdiction under this part over all electric ~~suppliers~~ *facilities providers* subject to ~~the provisions thereof~~ *this part."*

Section 43. Section 69-5-111, MCA, is amended to read:

"69-5-111. Judicial remedies. (1) Whenever ~~it shall appear that any~~ *an* electric ~~supplier~~ *facilities provider* is failing or omitting or about to fail or omit to do anything required of it by this part or is doing or is about to do anything or to permit anything to be done contrary to or in violation of this part, ~~any~~ *the* electric ~~supplier~~ *facilities provider* affected ~~thereby shall have the right to~~ *may* file a complaint in the district court ~~briefly~~ setting forth the acts or omissions complained of and requesting an injunction.

(2) If an affidavit showing that grounds exist ~~therefore~~ that an *electric facilities provider is in violation of this part* is filed with the complaint, a temporary restraining order ~~shall~~ *must* be issued without notice. A copy of the temporary restraining order, complaint, and affidavit ~~shall~~ *must* be served upon the defendant, together with an order to show cause why the temporary restraining order should not be made permanent, within 5 days after issuance of the temporary restraining order. The hearing on the order to show cause must be held at a date specified ~~therein~~ *in the order*, ~~which shall~~ *and may* not be more

than 10 days after service ~~thereof~~ *of the order* and ~~shall~~ *must* take precedence over all matters pending before the district court. A judgment making the injunction permanent or dissolving the temporary restraining order thereof *that was* issued and dismissing the complaint must be made ~~not later than~~ *before* 10 days after the hearing on the order to show cause.

(3) Any party aggrieved by the order may appeal to the supreme court of Montana by filing a notice of appeal in the district court within 20 days from entry of the order. The appeal must be perfected within 20 days ~~thereafter~~ *after filing the notice of appeal* and ~~shall~~ *must* take precedence over all matters pending before the supreme court of Montana."

Section 44. Commission jurisdiction over agreements. (1) All agreements between electric facilities providers must be submitted to the commission for approval. Each agreement must clearly identify the geographical area to be served by each electric facilities provider. The submission must include:

(a) a map and a written description of the area; and

(b) the terms and conditions pertaining to the implementation of the agreement.

(2) Whenever an agreement involves the exchange or transfer of customers within service territories, the following must also be included with the agreement submission:

(a) the number and class of customers to be transferred;

(b) assurance that the affected customers have been contacted and have received a written explanation of the difference in rates; and

(c) information with respect to the degree of acceptance by affected customers, such as the number in favor of and those opposed to the transfer.

(3) In approving agreements, the commission shall consider but not be limited to consideration of:

(a)the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electric service to the existing or future ratepayers of any electric facilities provider party of the agreement; and

(b) the reasonable likelihood that the agreement will eliminate existing or potentially uneconomic duplication of electric service facilities.

(4) An agreement approved by the commission is valid and enforceable, and except as provided in 69-5-106, an electric facilities provider may not offer, construct, or extend electric service facilities into an exclusive territory.

(5) The commission shall state its findings and conclusions for approving or disapproving an agreement and shall render a decision within 90 days of receipt of the agreement. The electric facilities providers submitting the agreement to the commission shall act according to the agreement until a decision is rendered.

(6) Upon approval of the agreement, any modification, changes, or corrections to this agreement must be approved by the commission.

(7) The commission may promulgate rules to administer this part consistent with the requirements of this part.

Section 45. Appropriation. (1) The legislative services division may

accept gifts, grants, or other donations for the purpose of offsetting the costs of conducting the activities of the transition advisory committee under [section 29] or the study required in [section 30).

(2) A gift, grant, or other donation made by a public utility, as defined in 69-3-101(1)(a), (1)(c), or (1)(d), is a cost that is nonrecoverable from ratepayers and must be borne 100% by the shareholders of the company making the gift, grant, or donation.

(3) The legislative services division is appropriated up to $200,000 of any gifts, grants, or other donations received under this section, and the appropriation is a biennial appropriation.

(4) If the amount of gifts, grants, or donations exceeds the amount appropriated under subsection (3), the excess must be refunded to the donors in the ratio of their respective gift, grant, or donation to the total gifts, grants, and donations received.

(5) If the amount of the gifts, grants, and donations expended for conducting the activities of the transition advisory committee under [section 291 or the study required in [section 301 is less than the amount received as gifts, grants, or donations, the excess must be refunded to the donors in the ratio of their respective gift, grant, or donation to the total gifts, grants, and donations received.

Section 46. Repealer. Section 69-5-103, MCA, is repealed.

Section 47. Saving clause. [This act) does not affect rights and duties that

matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act).

Section 48. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act) is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 49. Codification instructions. (1) [Sections 1 through 31] are

intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 31].

(2) [Section 44) is intended to be codified as an integral part of Title 69, chapter 5, part 1, and the provisions of Title 69, chapter 5, part 1, apply to [section *44]*.

Section 50. Effective date. [This act] is effective on passage and approval.

Approved May 2, 1997